*** HON'BLE SRI JUSTICE B. PRAKASH RAO**

+ WRIT PETILTION NO.10388 OF 2004

%Dated 17-01--2005

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R. Sudhakar Reddy, S/o Subbareddy,
R/o 403, Kavya Delux Apts, Yusufguda, Hyderabad-38.

..... APPELLANT

VERSUS

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$ 1 The Govt of A.P., Irrigation & CAD (PW) Department, rep. by

Secretary, Secretariat, Hyderabad.
2 The Chief Engineer, Minor Irrigation, Erramanzil, Hyderabad
3 Commissioner of Tenders, BRKR Bhavan, Hyderabad.
4 The Superintending Engineer, I & CAD., Irrigation Circle, Ongole.

.....RESPONDENTS

@ Counsel for Appellant: **MR.M.P.CHANDRAMOULI**

^ Counsel for Respondent: **GP FOR IRRIGATION & COMM AREA DEV.**

< GIST:

> HEAD NOTE:

? Cases referred

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SEVENTEENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION NO : 10388 of 2004

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Between:

R. Sudhakar Reddy, S/o Subbareddy,
R/o 403, Kavya Delux Apts, Yusufguda, Hyderabad-38.

..... PETITIONER

AND

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1 The Govt of A.P., Irrigation & CAD (PW) Department, rep. by

Secretary, Secretariat, Hyderabad.
2 The Chief Engineer, Minor Irrigation, Erramanzil, Hyderabad
3 Commissioner of Tenders, BRKR Bhavan, Hyderabad.
4 The Superintending Engineer, I & CAD., Irrigation Circle, Ongole.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, direction order or orders declaring the action of the respondents in rejecting the Technical bid submitted by the petitioner and proceeding to evaluate the financial bid of other tenderers pursuant to tender notification No. 20/2003-04 dated
16-02-2004 for the construction of the Check-dam across gundlakarmma River near Boddluruvaripalem, Ongole Mandal, Prakasham District as wholly arbitrary, illegal without jurisdiction and void and consequently direct the respondents to open the price bid of the petitioner and evaluate it for the work along with the other price bids.

Counsel for the Petitioner: MR.M.P.CHANDRAMOULI

Counsel for the Respondents: GP FOR IRRIGATION & COMM AREA DEV.

The Court made the following :

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THE HON'BLE SRI JUSTICE B.PRAKASH RAO

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WRIT PETITION No.10388 of 2004

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ORDER:

Heard Sri M.P.Chandramouli, the learned counsel appearing for the petitioner and the learned Government Pleader for Irrigation on behalf of the respondents 1 to 4 herein.

2. The core question which is involved in this writ petition for consideration is as to whether on the facts and circumstances, in case of submission of tender, the

documents to be filed by the tenderer should be attested by a Gazetted Officer and the non-compliance of which would authorize the authorities to reject the same.

3. The brief resume of the facts is that the petitioner, who is a contractor, seeks to assail by way of a Writ of Mandamus against the impugned action of the respondents in rejecting his technical bid and proceeding to evaluate the financial bid of other tenderers pursuant to the notification issued by the respondents for the purpose of construction of the check-dam across Gundlakamma River near Boddiluruvaripalem, Ongole Mandal, Prakasham District as arbitrary, void and without jurisdiction and consequently direct the respondents to open the price bid of the petitioner and evaluate it for the work along with the other price bids.

4. In pursuance of the notification issued by the fourth respondent herein on 16-02-2004 calling for the tenders for the aforesaid work, which was at an estimated cost of Rs.415.93 lakhs, the petitioner had submitted his tender formats duly filled and enclosed with all the documents, as required along with the certificate of registration, Income Tax clearance, Sales Tax certificate, experience certificate, Commercial Tax certificate etc., on 08-03-2004 which was the closing date for submission of tenders. The bid as contemplated as consists of two parts viz., one technical and another one price bid. Having submitted the said bid, the petitioner uploaded all the documents and certificates after duly signed by him, submitted copies of all the documents as per Clause 26(c) and Clause 27 of the Notice inviting tenders and also Clause 2.2 of Tender conditions. It is the case of the petitioner that his bid and the documents enclosed are in strict conformity of all the requirements. According to him, as per Clause 26(b) of the Notice inviting tender details, the bidders shall sign in all the statements, documents, certificates uploaded by them, owning responsibility and for the correctness and authenticity. Therefore, he had complied with the same by duly signing and it is his further case that nowhere amongst the conditions it is contemplated that any documents or papers have to be attested by the Gazetted Officer. Subsequent to the last date for submission of tenders on 08-03-2004, the opening of the technical bid was proposed for 09-03-2004 and the opening of the price bid was fixed on 15-03-2004. However, the petitioner was not aware nor informed about the result of his bid and it is only on checking with the *website* on 25-03-2004, it was found that the evaluation was in progress. Subsequently, he did not receive any like information. Therefore, the petitioner had to make enquiries in the Circle Office and he was informed that the price bid was not opened on the ground

that the copies of the certificates and documents filed by him were not attested by a Gazetted Officer. Thereupon, the petitioner addressed a letter dated 06-04-2004 to the second respondent herein pointing out that there is no such requirement nor was it contemplated under any of the tender conditions and therefore the rejection of the petitioner's tender was not correct. The said letter was marked to the respondents 3 and 4. In reply thereto, the fourth respondent gave a letter dated 07-04-2004 stating that the Condition No. 2.2 of the tender conditions requires that the attested copies of the uploaded statements, certificates and documents have to be submitted by the bidder to the Superintending Engineer before opening of the technical bid. The petitioner subsequently met the authorities and tried to convince them that there is no such requirement under any of the conditions for attestation by the Gazetted Officer and thereupon the respondents have assured that the matter would be looked into. Thereafter, the petitioner received a phonogram dated
27-05-2004 and telegram on the even date from the fourth respondent requesting to submit a letter for extending the validity period of his tender by one month otherwise the tender will not be considered and to extend the Earnest Money Deposit from 07-06-2004 to 08-07-2004 and inform by 07-06-2004. The fourth respondent had addressed a letter dated 31-05-2004 to submit the said extending letter up to 08-07-2004. Complying the same, the petitioner submitted a letter dated 28-05-2004 to the fourth respondent extending the validity period as required by them. In regard to the EMD, the petitioner sent a letter dated 02-06-2004 that the bank guarantee is valid up to 07-09-2004 as against the required extension up to 08-09-2004. Once again, on checking the *website* on 19-06-2004, it was found that the petitioner's tender evaluation was in progress. However, on enquiry by personally in the Circle Office, it was found that the petitioner's price bid was not opened on the same objection and the third respondent is proceeding in a bias manner to finalize the tenders. Therefore, the case of the petitioner is that there being no such specific condition contemplated under the tender formats and any undisclosed departmental instructions requiring the attestation by the Gazetted Officer cannot be relied on nor would it bind the petitioner. Hence, the writ petition.

5. Contesting the petitioner's claim, the case of the respondents is that there is no dispute in regard to the issuance of notification calling for tenders for the aforesaid work and submission of the tender formats by the petitioner along with others. However, it is pointed out that as per Condition No. 7.2 in the tender notice, it is specifically contemplated that after uploading the technical bid/price bid, the attested

copies of the documents uploaded are to be submitted by the bidders before the date of opening of the technical bid. Therefore, it was pointed out that since the petitioner's documents are not attested by a Gazetted Officer as required. The Condition No.7.5, which contemplates the experience, and turnover certificates should be certified by the concerned Executive Engineer and countersigned by the concerned Superintending Engineer. The same were not inconformity and therefore cannot be taken into consideration. Therefore, it is the case of the respondents that the attestation should be done by Gazetted Officer only as defined under the aforesaid Condition No.7.5 of the tender notice and the petitioner is bound by the same. The petitioner's insistence that the self attested copies would be sufficient compliance cannot be accepted. Hence, the writ petition is liable to be dismissed.

6. The main submission made on behalf of the petitioner is to the effect that the attestation as contemplated under the terms and conditions need not be by any Gazetted Officer since there is no such specific provision contemplated and therefore the rejection of the petitioner's bid is only unsustainable.

7. The learned Government Pleader sought to place reliance on the aforesaid Condition No.7.2 read with 7.5 along with the other terms to say that the attestation as contemplated is only by the Gazetted Officer and not otherwise and more so it would not take in the self-attestation as sufficient compliance.

8. Considering the submissions and coming back to the question arising and on perusal of the entire material, the relevant clauses mainly pressed into service are condition No.7.2 and condition No.7.5 which read as follows:

> "7.2. After uploading the Technical/Price Bid, the attested copies of all the documents by certificates as indicated in the scanned statement of list of documents, uploaded (except the price bid/offer) and DDs/B.Gs in original towards the schedules cost and EMD are to be submitted by the bidder to the superintending Engineer, Irrigation Circle, Ongole so as to reach before the date of opening of the technical Bid. Failure to furnish any of the uploaded documents, certificates, before the technical bid opening date will entail rejection of the bid and forfeiture of EMD. Similarly, if any of the certificates, documents etc., furnished by the bidder is found to be false/fabricated/bogus, the bidder will be black listed and the EMD forfeited."

> "7.5 If the tender is made by an individual, it shall be signed with his full name and his address shall be given. If it is made by a firm, it shall be signed with the Co-partnership name by a member of the firm, who shall also sign his own name and the name and address of each member of the firm shall be given, if the tender is made by a corporation it shall be duly signed by authorized officer who shall produce with his tender satisfactory evidence of his authorization. Such tendering corporation may be required before the contract is executed to furnish evidence of its corporate existence. The experience and turnover certificate should be certified by the concerned Executive Engineer and countersigned by the concerned Superintending Engineer and copies may be produced duly got attested by the Gazetted officers."

9. On a bare reading of the aforesaid clauses and condition No. 2.2 regarding the submission of bids and which is extracted below, it makes clear that the requirement is that of filing of attested copies of the documents, drawing a distinction with those to be signed by the bidder as contemplated thereunder. Condition No.2.2 reads as follows:

> "2.2 Submission of Bids: The bidders who are desirous of participating in 'e' procurement shall submit the technical bids, price bids etc., in the standard formats prescribed in the tender documents, displayed at 'e' market place. The bidders should invariably upload the statements showing the list of documents to be produced in support of their Technical bids. The bidder may also upload scanned copies of certificates, which is optional. The bidder shall sign on all the statements, documents, certificates, uploaded by him, owning responsibility for their correctness authenticity."

10. No-doubt as pointed out by the learned counsel for the petitioner, there is no definition specifically provided for the expression 'attestation'. Therefore, necessarily the meaning of it should be the one as per the law. Further, it is to be noticed that the attestation as contemplated does not also specifically mean or include only self-attestation different from signing. The attestation is required for the purpose of authenticity and correctness of the documents filed and therefore any documents sought to be relied on by a person, cannot insist that such attestation only should be a self-attestation. It is relevant to note Section 3 of the Transfer of Property Act, which contemplates that:

> "Attestation , in relation to an instrument, means and shall be de3emed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant, but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary".

11. Therefore, it indicates that the attestation is not by the author of the document or would not be a self-attestation as such. Further, there is total in regard to the meaning to be given for the attestation in contra to the execution of a document. Therefore, the execution and attestation cannot run on the same lines nor one would include the other. Thus, even as per Clause 7.5, a specific procedure is contemplated for the purpose of attesting. In view of the same, it cannot be said that the attestation as contemplated is only that of self-attestation. It is also now well established that once a specific mode is contemplated for a requirement, the same has to be followed. By a reading together both the Clauses 7.2 and 7.5 as pointed out above, it sufficiently explains and provide for the mode of attestation of the documents, which are sought to be filed by the tender. In the circumstances, it cannot be said that there is no procedure contemplated under the tender form nor it includes any self-attestation as sufficient compliance. In the circumstances, it is held that as per the tender format, attestation means the one by the competent authorities and further it would not include the self-attestation. Therefore, it cannot be said that there is any illegality in rejecting the petitioner's tender. Hence, I do not find any merits in the writ petition.

12. The writ petition is, accordingly, dismissed. No costs.

B. PRAKASH RAO, J

Date: 17 -01-2005.

Chvn.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. One copy to the Hon'ble Mr. Justice B.Prakash Rao (for his Lordships kind perusal)

2 The Secretary, Govt of A.P., Irrigation & CAD (PW) Department,

Secretariat, Hyderabad.
3 The Chief Engineer, Minor Irrigation, Erramanzil, Hyderabad
4 Commissioner of Tenders, BRKR Bhavan, Hyderabad
5 The Superintending Engineer, I & CAD., Irrigation Circle, Ongole

6 Two C.Cs. to the G.P. for Irrigation & Comm. Area Development,

High Court Buildings, Hyderabad (OUT).

7. Two C.D. copies.

8. The Under Secretary, Union of India, IMinistry of Law, Justice & Company Affairs, New Delhi.

9. The Secretary, A.P. Advocates Association Library, High Court Buildings, Hyderabad.

10. 8 L.R.coipies.

11. One copy to Mr. M.P.Chandramouli.

Note: L.R. copy to be marked.

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